BAY STATE HYDROPOWER ASSOCIATION
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October 31, 2008

Department of Energy Resources
100 Cambridge Street
Boston, MA 02114

RE: **Request for Reply Comments on the Renewable Portfolio Standard Class I under MGL Chapter 25A, Section 11F**

Dear Sir/Madam:

The Bay State Hydropower Association ("BSHA") thanks the Department of Energy Resources (the "Department") for the opportunity to submit reply comments on the Renewable Portfolio Standard ("RPS") of the Green Communities Act (the "Act"). As you are aware, the BSHA comprises over 90% of the owners of hydro facilities in Massachusetts with over 90% of the capacity of hydropower in the Commonwealth.

Members of the Bay State Hydropower Association provide renewable and non-carbon emitting energy to the citizens of the Commonwealth of Massachusetts. The Association's members will be an integral part of achieving Commonwealth's goal of attaining 15% of energy supply from renewable resources by 2020. Members of the BSHA provide green investments and jobs in Massachusetts.

The operation of the RPS is very important to the members because it will provide for maintenance of existing facilties of a certain size and the development of more power either from new facilities or improvements to existing facilities.

Following are the Association's reply comments on Class I from the Department's inquiry and comment notices.

Class I Comments

Implementation Responsibility and Timing:

The Association would like to emphasize that qualifying hydro resources must be afforded the means to be certified to begin producing Class I RECs as of January 1, 2009. As a

result, it is vital for the Department to: a) issue its regulations in a timely manner, and b) establish that any qualifying resource which submits a complete application within 90 days of the issuance of final regulations will be deemed certified to begin producing RECs as of January 1, 2009. If the rules promulgated by DOER do not ensure that hydro RECs will be available on January 1, 2009, then suppliers and hydro facilities will be at a disadvantage and the goal of this legislation will be frustrated.

New Hydropower Facilities

The Association would like to comment on and would like to propose additional conditions to the definition of what should be considered a new hydro resource for which Class I RECs should be available. These should include, after December 31, 1997, (a) making capital improvements to a hydro facility, the cost of which improvements represent at least 50% of the total value of the equipment and associated structures at such facility prior to the improvements (exclusive of the value of the land) or (b), if a hydro facility is brought back into commercial operation after having generated no electric power for a period of at least three years.

25 MW Capacity Limitation

As stated in Section 11F(c)(8) of SECTION 32 of the Green Communities Act, hydrokinetic energy is considered a separate and distinct resource and thus the up to 25 MW limitation of hydropower does not apply to this type of technology and no hydrokinetic installation will affect the up to 25 MW of a new or incremental hydropower. Once certification for new or incremental hydropower as Class I take place, no action associated with any further incremental hydropower should affect the previously certified Class I resource, in whole or in part.

Environmental Standards

As stated in the previous comments, hydro facilities in Massachusetts already comply with very stringent environmental standards. The suggestion that hydro facilities should also comply with the Low Impact Hydropower Institute – a nongovernmental organization, based outside of Massachusetts - does not further the Department's goals of 15% renewable energy by 2020. Previous comments have detailed FERC oversight and jurisdiction over hydro facilities and the Association recommends that the FERC process, which mandates state environmental review, be the standard for the environmental test.

Determination of Eligible Incremental Energy

The Association would also like to reiterate its position regarding the determination of eligible incremental energy. Commenter's have stated that the average output of a facility should be determined by taking the average output over a certain number of years to account for fluctuations between flood and drought years. This method, unless it embraces a large span of years, on both the pre-improvement and post-improvement sides of the comparison, is inexact, at best. The Association recommends that either one of the following methods be allowed, at the

applicant's discretion. Either: a) the FERC's "Renewable Energy Production Tax Credit: Instructions for Requesting Certification of Incremental Hydropower Production Pursuant to the Energy Policy Act of 2005" apply; or b) a "Water-to-Watts" method. Under a "Water-to-Watts" method, many applicants will have access to verifiable hourly hydrologic gage information, describing the quantity of river flow available to their facilities on an instantaneous basis. Almost all applicants have verifiable records indicating the rate of energy production at their facilities on an instantaneous basis. By correlating historic hydrologic and energy production records, applicants may develop a historic energy production rates for their facilities. These historic rates can easily be compared to the new energy production rates at their improved facilities, and an incremental energy production calculation can be made.

Thank you again for the opportunity to provide these reply comments. If you have any questions, please contact me or our counsel, James Smith, Esq. or Nancy Farias, Esq., at 617-523-0600.

Respectfully submitted,
Bay State Hydropower Association

Thomas Tarpey
President